

# Reflection on an Ethic of Officership

RICHARD SWAIN

Units of the United States Army are engaged in two protracted counterinsurgency campaigns that stress the institution in many ways. Among the most dangerous challenges of insurgent wars is their corrosive environment that wears on even highly disciplined soldiers and from time to time brings ethical failures that strike at the reputation of the entire force. The protracted nature of the struggle also challenges the patience of many citizens, among them the retired cohort of the armed forces. There was an argument even before the war about the proper role of military figures in national policy debates.<sup>1</sup> This has been exacerbated recently by public demands from distinguished retired officers for the dismissal of the then Secretary of Defense Donald Rumsfeld, the second most senior civilian in the military chain of command.<sup>2</sup> After the 2006 midterm elections, one retired general even suggested in the editorial pages of *The New York Times* that the Army was no longer “with” the civilian leadership.<sup>3</sup> This article is designed to lay out a framework for discussion of the limits of proper conduct by those who hold the President’s commission, active and retired; and to answer the question: What is an Ethic of Officership?

It is at first striking that the only category of Army member lacking a coherent official or expressed ethic, or creed, is the commissioned Army leader. There are the “Code of Conduct,” “Army Values,” “Warrior Ethos,” and a “Soldier’s Creed” to guide all uniformed members, including officers. There is a Noncommissioned Officer Creed, and now an Army Civilian Creed, each intended to guide the conduct of other specific categories of Army members. There is, however, no officer’s creed, though that does not mean there is no ethic of officership where ethic is defined according to the German sociologist Max Weber as “those psychological sanctions which . . . give a direction to practical conduct and [hold] the individual to it . . . .”<sup>4</sup>

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Officership is a still uncomfortable neologism, rising out of the conclusions of the pre-9/11 “Army Training and Leader Development” studies. Officership stands for the practice of commissioned army leadership. The existence of the commissioned officer as a separate type, distinct from other categories of uniformed service members, is established by tradition, outward symbols, a separate punitive article about unbecoming conduct, and distinctions in legal authority expressed in penalties for disobedience or assault on a commissioned officer in execution of his or her office. Officers can be punished by court-martial for contempt toward government officials.<sup>5</sup> The function of officers, as distinct from enlisted members, has been declared by decisions of the US Supreme Court.<sup>6</sup> This article argues that any ethic of Army officership must be founded on the principles of the Constitution, the officer’s “Oath of Office,” the commission from the President, and Section 3583 of Title 10, *Requirement of Exemplary Conduct*. Moreover, it asserts that the constraints of such an ethic remain in place so long as one holds the officer’s commission.

The ethic of commissioned service begins with the Constitution, the Nation’s governing compact. “We the People” declare among our purposes, formation of a more perfect Union, establishment of justice, provision for the common defense, and ensuring domestic tranquility. Section 8 of Article I charges the Congress to “provide for the common Defense,” and goes on to empower the Congress:

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces. . . .

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Among the provisions of law establishing the armed forces is the requirement that all appointments to the regular components, senior officer promotions, and general officer assignments be approved by the Senate. From time to time the Senate does intervene and withhold approval of individual promotions and assignments.

Article II, Section 2, declares, as one of his few enumerated powers, that “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the Service of the United States . . .” The President is empowered to make treaties with advice and consent of the Senate and to “appoint Officers of the United States whose appointments are not herein otherwise provided for [Army officers], and which shall be established by Law,” and he “shall Commission all the Officers of the United States.”

Article VI does two things of transcendent importance to military officers. It declares that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . .” and it mandates that “The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and the executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution, but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

So, officers were to be “bound by Oath” to support the Constitution and obey the law and ratified treaties. Officers are thus bound to respect the authority of the President as Commander in Chief, the powers and authority of Congress in its prescribed roles, and the authority of the established judicial system to interpret the law, which we have not addressed specifically here but which is laid down by Article III of the Constitution.

The oath binding officers is today found in Title 5, US Code, *Government Organization and Employees*. The Oath of Enlistment and that made by West Point cadets, by contrast, are part of Title 10, *Armed Forces*.

“It is not the oath that makes us believe the man, but the man the oath,” wrote the Greek playwright Aeschylus. An oath is a moral commitment, made publicly, which we secure with our very reputation. The “Title 5 Oath” is simple and makes only three positive moral commitments as to future conduct:

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; I will bear true faith and allegiance to the same; . . .

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***“The commission is to continue at the pleasure of the President of the United States, which means the right of resignation or withdrawal from commissioned status is not unlimited.”***

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and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.<sup>7</sup>

Before the oath, there is the commission, tendered by the President in accordance with the constitutional duty addressed above, to “Commission all the Officers of the United States.” The commission is an announcement of appointment to office, a grant of authority, and an instruction for the appointee from the Commander in Chief. This document says a good bit more about the expectations and obligations placed on commissioned officers.

First of all, it states that the commission is awarded based upon the President’s confidence in the officer’s patriotism, valor, fidelity, and abilities, four virtues we can assume the President expects to see modeled in the appointee’s conduct. The new officer is instructed, in terms that parallel the oath, to “carefully and diligently discharge the duties of the office to which appointed by doing and performing all manner of things thereunto belonging.” This is followed by a grant of authority from the President empowering the officer to give orders and to be obeyed by inferior officers and lesser ranks. At the same time, it enjoins the officer’s obedience to orders from the President and other superior officers in accordance with the laws of the United States of America.

The commission is to continue at the pleasure of the President of the United States, which means the right of resignation or withdrawal from commissioned status is not unlimited. Acceptance of any resignation is discretionary on the part of the President or those executing his authority. Resignation may be offered but it is not complete on the initiative of the officer. Resignation can be refused. The officer then continues to be morally obliged to adhere to his or her original undertaking of service. Indeed, it is an open question whether voluntary resignation over a matter of principle in time of war is even appropriate, something that will be addressed hereafter.

Congress, exercising its constitutional authority, has incorporated words expressing a “Requirement of Exemplary Conduct” for commanders and others in authority, into Title 10, US Code, the enabling legislation that

raises and supports the several armed forces in fulfillment of Congress's constitutional authority.

All commanding officers and others in authority in the Army are required:

- To show in themselves a good example of virtue, honor, patriotism, and subordination.
- To be vigilant in inspecting the conduct of all persons who are placed under their command.
- To guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them.
- To take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, physical well-being, and general welfare of officers and enlisted persons under their command or charge.<sup>8</sup>

While addressing itself to commanding officers and others in authority, the contents are most specifically addressed to commissioned leaders who alone can command.

From these authoritative sources, a grounded code of ethics, posed as individual virtues, may be derived.<sup>9</sup> Some might object to grounding a professional ethic on law, as too narrow a basis. The point, here, however, lies in the hortatory nature of statute. Whereas punitive laws are intended to sanction those who break faith with their society, publicly declared virtues are the personal qualities intended to motivate members to make a positive contribution to their Nation.<sup>10</sup> They are appropriate and sufficient given the nature of the United States as a nation founded on law.

Although the ultimate loyalty demanded of every officer is to the founding compact, the "Constitutional Oath" clearly requires subordination to civil authorities, especially the commander in chief whose authority they carry and, in accordance with the provisions of Title 10, to the Secretary of Defense, who lies next in the chain of command from the President, and to the service secretary, by statute the head of the service department. Consequent to Article VI of the Constitution, officers must respect and protect the rights recognized by the Constitution and federal law to belong to their fellow citizens, and must be obedient to the laws of the United States and international treaties ratified in accordance with constitutional procedure. Even the order of the President does not relieve the officer of those obligations to obey the law as interpreted by the courts.

The commission adds additional virtues, particularly patriotism, valor, fidelity, and abilities; diligence in performance of duty; and obedience to superiors. These are echoed by Title 10, Section 3583, as virtue, honor,

patriotism and, again, subordination. Vigilance is required in exercising command, diligence in enforcing laws and regulations, with a positive requirement to safeguard the “morale, physical well-being and general welfare” of those under command or charge, what might be called selfless service to subordinates.<sup>11</sup> These produce a list of ten virtues expected from every commissioned officer solely on the basis of their appointment and oath.

- Subordination.
  - ♦ To civil authorities.
  - ♦ To superiors.
  - ♦ To welfare of soldiers (selfless service).
- Respect for the rights of others.
- Obedience to rule of law and treaty.
- Patriotism.
- Valor (Courage).
- Fidelity.
- Abilities (Competence).
- Diligence and Vigilance.
- Virtue (Character).
- Honor.

To these are added the common virtues embodied in service values and creeds and the shared obligations inherent in professional status. This essay will address only those virtues explicitly linked to commissioned service.

### ***Subordination***

It may seem odd that the first virtue of officership is subordination, since the defining purpose of military officers is the function of command. The notion of subordination is fundamental to military service. It is reflected in the “New Testament” story of the Roman Centurion who begins his brief appearance with the statement, “For I too am a person subject to authority, with soldiers subject to me.”<sup>12</sup> There can be no more fundamental virtue in the officer of a democratic nation than subordination of self to a higher calling.

Subordination, first of all, is to the civil authorities elected and selected to serve the Nation according to the Constitution. Without this subordination to civil authority, the armed forces become a threat to the welfare and freedom of the Republic, as the Centurion’s army had done by the time he spoke. Second, the officer’s commission from the President imposes subordination to superior officers and the President of the United States. This obligation is at heart of the idea of discipline, which George Washington referred to as the soul of an army. Discipline makes the Army both an instrument reliable to the public welfare and responsive to the will of its commanders. Finally,

officers in the US Army are expected to subordinate their personal welfare and comfort to that of the soldiers, their fellow citizens, entrusted to their responsibility and authority.

In July 1951, General Douglas MacArthur sought to make a distinction between the loyalty owed by the soldier to the constitutional Commander in Chief and that to the Constitution itself. MacArthur told the Massachusetts Legislature: “I find in existence a new and heretofore unknown and dangerous concept that the members of the armed forces owe their primary allegiance and loyalty to those who temporarily exercise the authority of the executive branch of the Government, rather than to the country and its Constitution they are sworn to defend. No proposition could be more dangerous.” In a piece written for *The New York Times* a decade later, General Matthew Ridgway, who had his own disagreements with civilian leaders while Chief of Staff, supported MacArthur’s statement, observing “With this no right-minded American citizen could disagree.”<sup>13</sup>

In fact, both are wrong in the characterization of the requirements of the oath and commission. For the obedience and loyalty owed the occupant of the office of President of the United States is inherent in both the latter’s authority as Commander in Chief under Article II and in the wording of the commission issued under that authority. It is not personal, it is institutional and complete, so long as the President acts within the law, just as the loyalty owed the commanding general reflects an obligation to his or her office and not to his or her person.

MacArthur’s difficulty in 1951 arose from presuming to espouse policies different than the incumbent Commander in Chief, and he was rightly relieved. Ridgway, as Army Chief of Staff, challenged publicly the defense policy of the President who was a former Army general himself, Dwight D. Eisenhower.<sup>14</sup> As General Sir John Hackett wrote in criticism of MacArthur’s argument, it is “a principle basic to the whole concept of parliamentary democracy . . . that the will of the people is sovereign and no refusal to accept its expression through the institutions specifically established by it—whether in the determination of policies or in the interpretation of the constitution—can be legitimate.”<sup>15</sup> That is the underlying theory of representative democracy.

Hackett allows that in extreme cases this can be a difficult principle to follow, referring specifically to French General Charles de Gaulle’s actions in 1940, which Hackett found admirable but, he points out, nonetheless, that such action is in no way constitutional.<sup>16</sup> The Duke of Wellington summed it up in a single sentence: “I am *nimmukwallah*, as we say in the East; that is, I have eaten of the King’s salt, and therefore I conceive it to be my duty



to serve with unhesitating zeal and cheerfulness, when and wherever the King or his Government may think proper to employ me.”<sup>17</sup>

In the American Revolution, General Nathaniel Greene wrote of Washington’s loyalty to civilian control in the darkest days of the struggle for independence. “I can assure you,” Greene wrote John Hancock, “that the general will not exceed his Powers, altho’ he may sacrifice the Cause. There never was a man that might be more safely trusted.”<sup>18</sup> At Newburgh, following the long war, while agreeing to the officers’ claim in equity, Washington dissuaded them from acting to coerce the Continental Congress over the issue of officers’ pensions.<sup>19</sup> When he completed his task as Army commander, Washington returned his commission to Congress and departed to civil life.<sup>20</sup>

The practical outcome of this subordination is that those holding the commission are co-opted in their public pronouncements on government policy, which as officials of the executive branch they are bound to carry out. As citizens they are free to petition their representatives in Congress or appropriate courts. As professional soldiers they are bound to provide advice to appropriate officials as to feasibility of future options within the limits of their technical expertise, but it is not their task to judge the suitability of the missions assigned, which is fundamentally a political decision.

General J. Lawton Collins, Army Chief of Staff before Ridgway, had his troubles with the Secretary of Defense of his day. Collins wrote, “I believe that in loyalty to the President as Commander in Chief, a Chief of Staff should support the President’s programs unless, in a crisis, a chief is convinced that the security of the country is at stake, in which instance he should ask to be relieved.”<sup>21</sup> Collins states that at one point he informed Secretary of Defense Louis Johnson that he, Collins, could not support further cuts in the number of Army divisions. Collins believed he was saved from relief or forced resignation only by the onset of the Korean War.

General George Marshall rejected officer’s resignation over policy disagreements in the strongest terms, but the occasion of his reflection was the event of his threatening to do just that, to resign as Chief of Staff on the eve of war, rather than see a policy on officer procurement he opposed adopted by the Secretary of War. Marshall did not minimize what he saw as the ethical impropriety of his action, which he called “reprehensible,” but he reflected it was something in which he simply would not take part.<sup>22</sup>

Men and women of character, then, not infrequently have “a little . . . little area . . . where I must rule myself,” that they must serve even at cost to the requirements of strict professional duty.<sup>23</sup> Hackett justified the unconstitutionality of the de Gaulle exception, unconvincingly, by quoting an Elizabethan figure, Sir John Harrington: “Treason doth never prosper. What’s the

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***“The obligation to provide accurate professional advice when asked can sometimes lead to great discomfort for senior professionals.”***

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reason? For if it prosper none dare call it treason.”<sup>24</sup> A more pertinent defense might be that de Gaulle, the Frenchman who happened to be a soldier, acted in accordance with his civic conscience and history proved him right. He was forgiven by the sovereign, the French people.

The obligation to provide accurate professional advice when asked can sometimes lead to great discomfort for senior professionals. As officers of an executive department they are expected to support the policies of the government of the day. But, like all government officials serving in the executive branch, Army officers are bound to give honest judgments to the Congress in execution of its separate constitutional functions over war and peace, and raising and supporting armies.

This sometimes runs afoul of the obligation to support the Commander in Chief and to adhere to the customary but variable separation of government branches reflected in unadjudicated claims of executive privilege. Asked by a Congressman to provide his estimate of the number of troops required to secure Iraq, General Eric Shinseki famously, if somewhat reluctantly, provided a number out of step with Defense Department estimates. Congress was fulfilling their authority to ask. Shinseki fulfilled his to respond honestly, resulting in rather harsh treatment from his executive department masters who clearly expected him to espouse the party line. There is a famous epigram from Montesquieu: “Be true in everything, even on the subject of one’s country. Every citizen is obliged to die for his country; no one is obliged to lie for it.”<sup>25</sup> Ethically, Shinseki was on solid ground though; had he planted the question, as MacArthur “planted” his contrary policy views in a private letter to a Republican Congressman—subsequently made public—it would have been another matter entirely.

Officers are expected to practice subordination to their superior officers too and, like the Centurion, demand it from their subordinates in the form of discipline. In his first General Order upon institution of the Continental Army on 1 January 1776, Washington wrote “it is Subordination and Discipline (the life and Soul of an Army) which next under providence, is to make us formidable to our enemies, honorable in ourselves, and respected in the

world; and herein is to be shown the Goodness of an Officer.”<sup>26</sup> A century and a half later, the commander of the allied armies fighting the war in North Africa wrote his son at West Point, unconsciously paraphrasing Washington: “We sometimes use the term ‘soul of an army.’ That soul is nothing but discipline, and discipline is simply the certainty that every man will obey orders, promptly, cheerfully, and effectively.”<sup>27</sup>

Selfless service is assumed in American Army leaders though it is not always evident. In one of the clearest recent statements of institutional ethical norms, Acting Secretary of the Army R. L. Brownlee and Chief of Staff Peter Schoomaker stated:

We will seek individuals ready and willing for warrior service. Bound to each other by integrity and trust, the young Americans we welcome to our ranks will learn that in the Army, every soldier is a leader, responsible for what happens in his or her presence regardless of rank. They will value learning and adaptability at every level, particularly as it contributes to initiative: creating situations for an adversary rather than reacting to them. They will learn that the Army’s culture is one of selfless service, a warrior culture rather than a corporate one. As such, it is not important who gets the credit, either within the Army or within the joint team; what’s important is that the Nation is served.<sup>28</sup>

Commissioned Army leaders are expected to sacrifice their own comfort for their soldiers; to see that everything is done to ensure success in their efforts; and explicitly, by Title 10, Section 3583, “to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.” Often this means the maintenance of the discipline that keeps subordinates from forgetting their obligations as American soldiers and wandering beyond the values expected by the American people. Selfless service is a visible attitude to duty that builds the trust that all shared endeavors rely on when they become, quite literally, matters of life and death.

### ***Respect for the Rights of Others***

Respect for the rights of others, treating fellow human beings as they should be treated, is a virtue that should require little discussion. In the first place, the oath to the Constitution implies respect for the fundamental dignity of the rights guaranteed all citizens, whether or not they are inferior in rank and position. The spirit of the Constitution, particularly of the Bill of Rights and the 13th, 14th, and 15th amendments, is the recognition of the liberties required for establishment of the “general Welfare” and the “Blessings of Liberty to ourselves and our Posterity” that the preamble seeks. In observing this,

officers are no different than any other member, save that as their authority is greater, so is their responsibility.<sup>29</sup> Officers must be scrupulous in protecting the fundamental rights of their subordinates, even when charging them with wrongdoing, and they must demonstrate respect of the various people they act among, as the “moral agent of the American people.”<sup>30</sup>

### ***Obedience to Rule of Law and Treaty***

As already discussed, obedience to the rule of law and treaty is mandated by both the Constitution and the commission. As officers of the executive branch of government, military officers have a particular responsibility to execute the laws and agreements of the Nation. With particular regard to the laws of war, over which much ink and blood has recently been shed, the words of Francis Lieber, LL.D. who drafted the Union Army’s *Instructions for the Government of Armies of the United States in the Field*, remain instructive: “Men who take up arms against one another in public war,” he wrote, “do not cease on this account to be moral beings, responsible for one another and to God.” Lieber followed this with the admonition that “Military necessity does not admit of cruelty . . . nor of torture to extort confessions.” Pertinent to those who are involved in stability operations, he wrote: “As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.”<sup>31</sup>

It is very much the task of the officer to see that the environment of insurgency, so corrosive of discipline and values, is not allowed to reduce the respect for human dignity that marks the American experiment, to step down to the level of our lawless opponents. Only strict and continuous attention to that obligation ensures the honor of American arms.

### ***Patriotism***

Patriotism, the love of country, should be an essential feature of an officer’s character. It will inspire him or her in times of trial and, unless they possess it themselves, they will be unable to pass it on to their subordinates for whom some transcendent loyalty or commitment will sometimes be essential to warrant the risks and discomforts of military service. An essential part of patriotism is an abiding faith in the purposes of the Nation and the institutions of government even when they may appear to be traduced by less than perfect men and employed for purposes with which the officer does not personally agree.

### ***Valor (Courage)***

The soldier must show valor and possess courage because he works in a dangerous environment. Indeed as Sir John Hackett observes, it is his willingness to accept the likelihood of death, what Hackett calls a contract of “unlimited liability,” that marks the soldier as a respected figure in society.<sup>32</sup> The officer bears a particular responsibility for courage because it is the officer’s courage and will that are required to sustain subordinates in times of great stress. As Field Marshall Sir William Slim said in a Kermit Roosevelt Lecture many years ago:

It’s a funny thing, you know, but when you’re in command and things have gone wrong there always comes a pause when your men stop and – they look at you. They don’t say anything – they just look at you. It’s a rather awful moment for the commander because then he knows that their courage is ebbing, their will is fading, and he’s got to pull up out of himself the courage and the willpower that will stiffen them again and make them go on.<sup>33</sup>

Physical bravery under fire is expected of all soldiers. The moral courage to commit men to battle, especially in uncertain enterprises, requires courage of a different kind and yet, that is what officers do. Accomplishing dangerous and near impossible missions is why there are soldiers. The officers’ task is to accomplish the missions they are assigned at the least cost possible. Their task is not to bring all soldiers home unharmed, though that remains a noble if often unlikely goal. So long as the assigned task is legal, it remains the mission that takes precedence, even over the lives of those to whom it is assigned—that is why Hackett refers to the soldier’s contract as one of unlimited liability.

### ***Fidelity***

Fidelity means faithfulness to obligations and duties. According to S. L. A. Marshall, in the first (1950) edition of *The Armed Forces Officer*, it is the one of the four virtues listed in the commission that lies solely within the power of the officer to live up to. Patriotism, Marshall says, can be assumed. Valor one has to whatever degree one is blessed with it. But fidelity results from the persistent positive effort to grasp and do what is right in all circumstances.<sup>34</sup> Fidelity responds to the oath’s promise of bearing true faith and allegiance to the Constitution. Fidelity involves, as well, loyalty and respect for the motives of those who share one’s projects. It is the foundation for the special trust and confidence of the President and the basis of the reliance that can be placed in the superior, the subordinate, or the man or woman on one’s flank to do the right thing. The officer will not always agree with

decisions made and actions taken by those around him or her, but in absence of evidence to the contrary, the officer marked by fidelity will credit those superiors, subordinates, and peers with whom he or she acts at least with good intentions.

### ***Abilities (Competence)***

Military service exists to provide a necessary service to the Nation, the disciplined (Hackett calls it orderly) employment of armed force to accomplish political ends, in the extreme to secure the lives and property of the American people. Failure in this mission can result literally in the destruction of the Nation. Competence in the military arts and sciences thus rises to the level of an essential virtue for every officer. Indeed, the tasks and challenges involved are so complex, and often so perishable, that it takes a lifetime of study and practice to master the officer's calling. Matthew Ridgway said military leadership required 3 C's, character, courage, and competence.<sup>35</sup> General Fred Franks, USA Retired, talks of the practice of Battle Command requiring character, competence, and leader skills.<sup>36</sup> Douglas Southall Freeman, multi-volume biographer of Robert E. Lee, his lieutenants, and George Washington, phrased the same thoughts more informally. "Know your stuff. Be a man. Look after your men."<sup>37</sup> "Know your stuff" is about competence. It involves both training and education, the former involving mastery of practical skills and the latter development of intellect so these skills can be applied in proper order in the endless series of new challenges and unique contexts a military officer will confront as he or she progresses through a military career.

### ***Diligence and Vigilance***

Diligence has to do with how the officer approaches his or her responsibilities—with painstaking care and perseverance. S. L. A. Marshall characterized an officer's life as marked by "exceptional and unrelenting responsibility."<sup>38</sup> The magnitude of responsibility, for the lives and welfare of your subordinates and, indeed, for the survival of the Nation, demands nothing less than full diligence in execution of duty and intolerance of lapses of duty in others. In the letter from Dwight Eisenhower to his son John, quoted above, the general wrote that failure to do one's duty was "the biggest crime a soldier can commit."<sup>39</sup> Diligence in leadership requires vigilance in oversight. One good company commander practicing both at Abu Ghraib could have saved the honor of the Nation and the welfare of the soldiers implicated in disgraceful conduct.<sup>40</sup>

## ***Virtue (Character)***

Virtue is a term that comes to us from the ancient philosophers where it means the quality of excellence or goodness. In terms of officers, it refers to character, who the officer is. Everyone has a character, the sum of his or her dispositions, which may be good or bad. Sir John Hackett had a good deal to say about virtue or character, and he did it in fairly concise terms. In his Lees Knowles lectures, he wrote in response to a comment about the military virtues from the historian Arnold Toynbee, that “what is important about such qualities as these [courage, fortitude, and loyalty were specifically mentioned] in the present argument is that they acquire in the military context, in addition to their moral significance, a functional significance as well.”<sup>41</sup> Elsewhere, he said, “A man can be selfish, cowardly, disloyal, false, fleeting, perjured, and morally corrupt in a wide variety of other ways and still be outstandingly good in pursuits in which other imperatives bear than those upon the fighting man. . . . What the bad man cannot be is a good sailor, or soldier, or airman.”<sup>42</sup>

Now the fact is, when you have hung around the Army for ten or 20 years, you will occasionally have grounds to question Hackett’s statement. You will see some radically successful senior officers whose characters are notoriously flawed. If you are circumspect, you may even admit to yourself there are officers and soldiers junior to you who may, with some merit, question the impeccability of your character. The real point of Hackett’s comment is that you will recognize as such the aberrations when you see them and you will do your best to avoid the pitfalls that diminish the professional character from what you know it is expected to be . . . not least by your fellow officers.

General Ridgway, who thought about character more than most men, called it the “bedrock on which the whole edifice of leadership rests.”<sup>43</sup> He told a story about meeting with a fellow corps commander in the hard days of the Battle of the Bulge in 1944. His fellow told him, on entering the battle on the flank of the XVIII Corps, “I’m glad to have you on my flank. It’s character that counts . . .” There was no amplification.” Ridgway continues, “None was necessary. Each knew the other would stick, however great the pressure; would extend help before it was asked, if he could; and would tell the truth, seek no self-glory, and everlastingly keep his word. Such feeling breeds confidence and success.”<sup>44</sup>

## ***Honor***

Honor, too, is an ancient concept, dating at least to Homer’s *Illiad* which is a study of the anger of Achilles and ancient honor, observed or neglected. In his book, *After Virtue*, the Notre Dame philosopher Alasdair Mac-

Intyre relates how the notion of honor evolved in the ancient Greek world, from Homer's day, when honor was tied to one's role—"doing what is due the king"—to Sophocles in Athens's golden age—"when the question of honor has become the question of what is due to a man."<sup>45</sup> Today, the virtue of honor can be understood as possessing the propensity to act in accordance with the highest expectations of one's office. The Army Value of Honor says simply "Live up to all the Army Values." It might as well say: Do what's right—always. No matter the inconvenience. No matter the danger. One need look no further than the self-sacrificial actions of Master Sergeant Gary Gordon and Sergeant First Class Randall Shughart in Mogadishu to see the heights to which a soldier's honor can rise.<sup>46</sup>

For most officers, honor is expressed in less dramatic moments by the disposition to make the hard choices and accept accountability for the outcomes. To tell the truth and be candid. To do one's duty. It is why Hackett reflected that "a digest of Cicero's *de Officiis* [On Duties] might well figure as a military training manual."<sup>47</sup>

### ***The Question of Retired Officers***

Following the public statements of certain retired general officers concerning the performance of the Secretary of Defense, the public political participation of retired officers has again become an issue that should engage the members of the military profession. The precedents are mixed. Historically, a number of prominent military figures have entered or engaged in national partisan politics, exploiting their prominence as professional military figures. Winfield Scott ran for President while on active duty. Dwight Eisenhower felt obliged to request relief from his Supreme Allied Commander, Europe assignment and transfer to inactive (as opposed to retired) status in April 1952 when the popular draft movement got to be too demanding. Ike did promise resignation would follow upon nomination as a major party presidential candidate.<sup>48</sup> Lieutenant General James Gavin, USA Retired, advised candidate John Kennedy and became Ambassador to France. Likewise, Admiral William J. Crowe, USN Retired, endorsed candidate Bill Clinton and later became Ambassador to the Court of St. James.

On the other extreme, George Marshall, while Chief of Staff, famously wrote a correspondent that "I have never voted, my father was a democrat, my mother a republican, and I am an Episcopalian."<sup>49</sup> When Marshall was appointed Secretary of State by President Truman, he took the unusual step of stating that he accepted with the explicit understanding that "the office of Secretary of State, at least under present conditions, is non-political and I am going to govern myself accordingly."<sup>50</sup> On the whole, Marshall's position has much to recommend



it, if not the abjuring of the individual ballot. It certainly seems a wiser approach than prominent retired military figures appearing on the dais of nominating conventions as partisan participants thereby throwing into question the partisan neutrality of the armed forces with which they are inevitably associated.

Still, it is at least a false proposition that upon retirement officers revert to full civilian status in so far as the obligations they undertook at their commissioning. Retirement is not resignation. It is a matter of fact, not interpretation, that retired officers remain members of the armed forces by law and regulation.<sup>51</sup> They receive a salary, in the case of senior officers a generous salary, and may be recalled to active duty under provisions of Section 64.4 of Title 32 – *National Defense* of the Code of Federal Regulations. They retain access to a number of military facilities and programs on the basis of their status. It is arguable that, because they lack authority over others, the provisions of Title 10, Section 3583 no longer obtain. However, unless like George Washington, they lay down their commissions by resignation, it is reasonable to assume that they remain at least ethically obliged to observe the limitations imposed by commissioned service, accepted by the oath they made and commission they still hold. These limitations are imposed by obligations of loyalty to the Constitution, the virtues of patriotism, valor, fidelity, and abilities, and certainly, as officers, include public respect to the office of President and other Department of Defense civil authorities.

We are left then, with the Socratic question: What is the good officer? Does movement to the retired list materially change that? If the good officer necessarily subordinates self to civil authorities, superiors, and soldiers, how and when does the good officer rightly express personal disagreement or dissatisfaction with those constitutionally his masters and their legal choices, made in the name of the Nation? Can the welfare of soldiers demand violation of the oath of loyalty to constitutional principles, binding both officers and subordinates? What conditions rise to the severity that they warrant departure from the commitment of the commissioning oath? When does objection become insubordination and disloyalty? Does the case change with regard to decisions arguably contrary to law and treaty? For retired officers, before or after judicial adjudication? Does the first amendment guarantee of free speech provide the sole limit of propriety in public pronouncement or does the ethic of the profession demand more? What does fidelity demand when those no longer in practice are asked to critique ongoing operations for which others are responsible? What are the nature and limits of “professional expertise?” Can it be separated from ungrounded opinion? Can the truth be partisan? Finally, is there a point where the restraints of professional conduct become civic folly greater than that produced by a commissioned officer undermining the authority of constitutionally legitimate authorities?<sup>52</sup>

These seem to be the pertinent questions requiring grounded answers before one can judge, and there is clearly disagreement on the limits of qualitative difference between active and retired officers.<sup>53</sup>

## ***Conclusion***

The intent here has been to lay out an ethic of officership derivable from the basic documents that call an officer into being: the Constitution, commission, oath of office, and Title 10, Section 3583. To criticize this approach as too legalistic ignores both the nature of the United States as a political entity and the relationship of the individual officer to the Nation. Commissioned officers, as a category of military leader, are called into existence as creatures of the law in a government structure, which itself is framed in law. The law exists not only as a punitive proscription of forbidden conduct but also as a public expression of the Nation, acting through the democratic process, to speak on issues of collective purpose and intention. The virtues identified are legitimate and normative precisely because they are explicit in the expressions of expectations from which they are derived. If they are not all inclusive, they are comprehensive enough to provide a guide within which any officer can live her or his life with honor, so long as she or he holds the President's commission.

In 1942, General George C. Marshall addressed an Officer Candidate School class at Fort Benning, Georgia. Among his remarks are these:

Never for an instant can you divest yourselves of the fact that you are officers . . . the fact that you are a commissioned officer in the Army imposes a constant obligation to higher standards than might ordinarily seem normal or necessary for your personal guidance. A small dereliction becomes conspicuous, at times notorious, purely by reason of the fact that the individual concerned is a commissioned officer.

But the evil result goes much further than a mere matter of unfortunate publicity. When you are commanding, leading men under conditions where physical exhaustion and privations must be ignored; where the lives of men may be sacrificed, then the efficiency of your leadership will depend only to a minor degree on your tactical or technical ability. It will primarily be determined by your character, your reputation, not so much for courage . . . but by the previous reputation you have established for fairness, for that high-minded patriotic purpose, that quality of unswerving determination to carry through any military task assigned to you.<sup>54</sup>

## **NOTES**

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1. Richard Kohn, "Out of Control: The Crisis in Civil-Military Relations," *The National Interest*, 35 (Spring 1994), 3-17. Russell F. Weigley, "The American Military and the Principle of Civilian Control from

McClellan to Powell,” *Journal of Military History*, Special Issue, 57 (October 1998), 27-58. Eliot Cohen, *Supreme Command: Soldiers, Statesmen and Leadership in Wartime* (New York: The Free Press, 2002).

2. John Batiste, “A Case for Accountability,” *The Washington Post* (19 April 2006), p. A 17. “Rummy & His Generals: An AFJ Roundtable on the State of American Civil-Military Relations,” *The Armed Forces Journal* (June 2006), 36-46, 66-67. A sidebar article summarizes the most recent statements. Lawrence F. Kaplan, “Officer Politics: Generals Used to be Neutral,” *The New Republic*, 231 (September 2004), pp. 23-25. Dean Falvy, “Rumsfeld’s Revenge: How the Retired Generals Who Have Called for His Resignation Could be Court-Martialed, and Why They Won’t Be,” *FindLaw For Legal Professionals*, [http://writ.lp.findlaw.com/commentary/20060503\\_falvy.html](http://writ.lp.findlaw.com/commentary/20060503_falvy.html).

3. Paul D. Eaton, “An Army of One Less,” *The New York Times* (10 November 2006), p. A 31.

4. Quoted in Peter Razzell, “The Protestant Ethic and the Spirit of Capitalism: A Natural Scientific Critique,” *British Journal of Sociology*, 28 (March 1977), 17.

5. Article 88, Uniform Code of Military Justice. Article 88 applies only to officers. A DOD Directive makes similar conduct by enlisted members punishable.

6. Justice Rehnquist, in *Parker, Warden, et al. v. Levy*, Supreme Court of the United States, 417 U.S. 733 (1974) writes, “An Army is not a deliberative body. It is an executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier,” <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=417&invol=733>.

7. The closing phrase is an interesting addition in light of the constitutional prohibition of religious tests. In *Elk Grove Unified School District v. Newdow*, No. 02-1624, Justice O’Connor calls the reference an “optional phrase,” acceptable as an act of “ceremonial deism,” <http://a257.g.akamaitech.net/7/257/2422/14june20041230/www.supremecourtus.gov/opinions/03pdf/02-1624.pdf>.

8. These are now incorporated into AR 600-20, *Army Command Policy*, 7 June 2006, para. 1-5, c (4) (d), p. 2.

9. The methodology adopted is certainly influenced by the author’s admiration of the work of Anthony E. Hartle, long the head of the Department of English [and philosophy] at the Military Academy. Hartle’s book, *Moral Issues in Military Decision Making* (2d ed.; Lawrence: Univ. Press of Kansas, 2004), is a classic unread by far too many officers.

10. Alasdair MacIntyre, *After Virtue*, (2d ed.; Notre Dame, Ind.: Univ. of Notre Dame Press, 1984), pp. 151 et seq.

11. This is reflected in the “Army Value of Selfless Service,” an admonition to “Put the Welfare of the Nation, the Army, and Subordinates Before Your Own,” FM 1, *The Army*, 14 June 2005, p. 18.

12. Matthew, 8:9; Luke, 7:8.

13. MacArthur quotation in the article. M. [Matthew] B. [Bunker] Ridgway, “A Code of Loyalty,” *The New York Times* (2 May 1973), p. 45.

14. Andrew J. Bacevich, “The Paradox of Professionalism: Eisenhower, Ridgway, and the Challenge to Civilian Control,” *Journal of Military History*, 61 (April 1997), 303-33.

15. Sir John Winthrop Hackett, “The Military in the Service of the State,” Chap. 7 of *War, Morality, and the Military Profession*, ed. Malham M. Walkin (2d ed.; Boulder, Colo.: Westview Press, 1986), pp. 115-17.

16. Ibid.

17. Quoted in John Keegan, *The Mask of Command* (New York: Viking, 1987), p. 163.

18. Quoted in David Hackett Fischer, *Washington’s Crossing* (New York: Oxford Univ. Press, 2004), p. 144.

19. George Washington, “Speech to the Officers of the Army,” Headquarters, Newburgh, 15 March 1783, in George Washington, *Writings* (New York: The Modern Library, 1997), pp. 496-500.

20. George Washington, “Address to Congress on Resigning Commission,” in *ibid.*, pp. 547-48.

21. J. Lawton Collins, *Lightning Joe: An Autobiography* (Baton Rouge: Louisiana State Univ. Press, 1979), p. 440.

22. General Marshall told his biographer he had threatened to resign if the Army lost control over officer procurement early in World War II, however, it was an action, he said, “which I think is very reprehensible on the part of a government official, the more so when he is a military official.” George C. Marshall interview with Forest Pogue, 22 January 1957, in *George C. Marshall: Interviews and Reminiscences*, (Lexington, Va.: George C. Marshall Research Foundation, 1986, 1991), p. 300.

23. Robert Bolt, *A Man for All Seasons* (New York: Bantam, 1979), p. 312. Bolt wrote about Sir Thomas More and his conflict with Henry VIII.

24. Hackett, “The Military in the Service of the State,” p. 117.

25. Quoted in Raymond Aron, *The Dawn of Universal History*, trans. Barbara Bray, ed. Yair Reiner (New York: Basic Books, 1996, 2002), p. 424.

26. George Washington, General Orders, Headquarters, Cambridge (Mass.), 1 January 1776, in *The Papers of George Washington*, eds. W. W. Abbot et al. *Revolutionary War Series*, No. 3, *January to March 1776*, ed. Philander D. Chase (Charlottesville: Univ. Press of Virginia, 1988), pp. 1-3.

27. Dwight D. Eisenhower to John Sheldon Doud Eisenhower, 22 May 1943, No. 1016 in *The Papers of Dwight David Eisenhower: The War Years II*, eds. Alfred D. Chandler, Jr., et al. (Baltimore, Md.: The Johns Hopkins Press, 1970), pp. 1151-52.
28. Department of the Army, *Serving a Nation at War: A Campaign Quality Army with Joint and Expeditionary Qualities*, p. 9, <http://www.army.mil/jec/>.
29. Hartle, *Moral Issues*, pp. 132-48.
30. Term used by Dr. Don Snider, Department of Social Sciences, at the US Military Academy at West Point.
31. "The Lieber Code of 1863," <http://www.civilwarhome.com/liebercode.htm>.
32. Sir John Winthrop Hackett, *The Profession of Arms: The 1962 Lees Knowles Lectures Given at Trinity College, Cambridge* (London: The Times Publishing Company, undated).
33. Sir William Slim, address to the Army Command and General Staff College, 8 April 1952. Copy provided CGSC Students AY 75-76, in possession of author. Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.
34. Department of Defense [S. L. A. Marshall], *The Armed Forces Officer* (Washington: US Government Printing Office, 1950), p. 3.
35. Matthew B. Ridgway, "Leadership," *Military Review*, XLV (October 1966), 40.
36. Frederick M. Franks, Jr., "Battle Command: A Commander's Perspective," *Military Review* (May-June 1996), 4-44.
37. Douglas Southall Freeman, Chapter 15, "Leadership; Lecture of May 11, 1949," *Douglas Southall Freeman on Leadership*, ed. Stuart W. Smith (Newport, R.I.: Naval War College Press, 1990), pp. 205-14.
38. Marshall, *The Armed Forces Officer*, p. 2.
39. Eisenhower to Eisenhower, 22 May 1943.
40. Paraphrase of Colonel James Lacey, "sad to think that all of this could have been avoided by one strong captain who had a basic education in the difference between right and wrong," quoted in Josh White and Tom Ricks, "Top Brass Won't be Charged Over Abuse; Army Reports Find Officers Responsible, but not Culpable, in the Abu Ghraib Scandal," *The Washington Post* (27 August 2004), p. A 17.
41. Hackett, *The Profession of Arms*, pp. 45-46.
42. Hackett, "The Military in the Service of the State," p. 119.
43. Ridgway, "Leadership," p. 40.
44. *Ibid.*, p. 41.
45. MacIntyre, *After Virtue*, p. 133.
46. Department of the Army, FM 1, *The Army*, June 2005, pp. 1-17.
47. Hackett, *The Profession of Arms*, p. 46.
48. Dwight D. Eisenhower to Harry S. Truman, 2 April 1952, *The Papers of Dwight David Eisenhower, Vol. XIII, NATO and the Campaign of 1952*, ed. Louis Galambos (Baltimore, Md.: The Johns Hopkins University Press, 1989), p. 1154. See also Dwight D. Eisenhower to General J. Lawton Collins, 15 March 1952, in *ibid.*, pp. 1073-74.
49. Letter from George C. Marshall to Charles J. Graham, 23 September 1943, in *The Papers of George Catlett Marshall: Volume 2, "We Cannot Delay," July 1, 1939-December 6, 1941*, eds. Larry I. Bland, Sharon R. Ritenour, and Clarence E. Wunderlin, Jr. (Baltimore, Md.: Johns Hopkins Univ. Press, 1986), p. 616.
50. Marshall quoted in Forrest C. Pogue, *George C. Marshall: Statesman, 1945-1959* (Fourth volume of Pogue's biography of Marshall) (New York: Viking Press, 1987), p. 145.
51. Title 10—Armed Forces, Subtitle B—Army, Part I—Organization, Chap. 307—*The Army*, p. 3075.
  - (a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.
  - (b) The Regular Army includes:
    - (1) The officers and enlisted members of the Regular Army.
    - (2) The professors, director of admissions, and cadets of the United States Military Academy.
    - (3) The retired officers and enlisted members of the Regular Army.
- AR 600-8-24, *Officer Transfers and Discharges*, Chap. 6, Sect. 1, pp. 6-8. Retirement status. "An officer on the retired list continues to be an officer in the U.S. Army."
52. This notion is taken from a review by Tim Rutten of a biography of Colin Powell, "Powell Biography Involves a Game of Connect the Blots," published in *The Los Angeles Times*, 9 October 2006, p. E.1.
53. See the exchange between Professor Eliot A. Cohen, "General Malaise," *The Wall Street Journal (Eastern Edition)*, (4 August 2004), p. A-12, and John M. Shalikashvili, "Old Soldiers Don't Have to Fade Away," *The Wall Street Journal (Eastern Edition)*, (17 August 2004), p. A-19.
54. George C. Marshall, "The Challenge of Command; An Address to the Graduates of the First Officer Candidate School, Fort Benning, Georgia, 18 September 1942," in *Selected Speeches and Statements of General of the Army George C. Marshall, Chief of Staff United States Army*, ed. H. [Harvey] A. DeWeerd (Washington: The Infantry Journal, 1945) pp. 220-21.